

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
INDUSTRIAL TELECOMMUNICATIONS	)
ASSOCIATION, INC.,	)
	)
GERALD R. WALKER	)
Licensee of Industrial/Business Private Land	)
Mobile Radio Station WPSV754, Chicago, Illinois	)
	)
Petitions for Modification of the License of	)
RF Data, Inc. for Industrial/Business Private Land	)
Mobile Radio Station WPTJ220, Chicago, Illinois	)
	)
AND	)
	)
RF DATA INC.	)
Licensee of Industrial/Business Private Land	)
Mobile Radio Station WPTJ220, Chicago, Illinois	)

**ORDER**

**Adopted: December 19, 2003**

**Released: December 23, 2003**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In the *Memorandum Opinion and Order* in the above-captioned matter,<sup>1</sup> we proposed to modify the license of RF Data, Inc. (RF Data) for Industrial/Business Pool Station WPJT220, Chicago, Illinois, by deleting frequency 471/474.3875 MHz, and revising the radio service code from YG (trunked) to IG (conventional). In this *Order*, we conclude that we should not implement the proposed modification. In addition, we conclude that the license of Gerald R. Walker (Walker) for Industrial/Business Pool Station WPSV754, Chicago, Illinois, cancelled automatically. Accordingly, we will modify our licensing records to reflect such cancellation.

**II. BACKGROUND**

2. The Commission's Rules provide that Private Land Mobile Radio (PLMR) frequencies between 470 and 512 MHz may be assigned on a shared basis to multiple users in the same area until a channel pair is loaded to capacity.<sup>2</sup> For Industrial/Business Pool systems, channel capacity is reached at

<sup>1</sup> Industrial Telecommunications Association, Inc. and Gerald R. Walker, *Memorandum Opinion and Order*, 18 FCC Rcd 1522 (WTB PSPWD 2003) (*MO&O*).

<sup>2</sup> 47 C.F.R. § 90.313(c).

ninety mobile units.<sup>3</sup> Section 90.313(c) of the Commission's Rules provides that, once a frequency pair is fully loaded, it may only be reassigned at a distance of at least sixty-four kilometers (forty miles).<sup>4</sup>

3. On May 30, 2001, the Commission received an application from Walker to operate an Industrial/Business Pool conventional station with ninety mobiles on frequency pair 471/474.3875 MHz at 233 South Wacker Drive, Chicago, Illinois (Walker Application).<sup>5</sup> The following day, May 31, 2001, the Commission received an application from RF Data to operate an Industrial/Business trunked station on the same frequency and transmitter site requested by the Walker Application, *i.e.*, 471/474.3875 MHz at 233 South Wacker Drive, Chicago, Illinois (RF Data Application).<sup>6</sup> The Industrial Telecommunications Association (ITA), an FCC-certified frequency coordinator for the PLMR services, certified the RF Data Application.<sup>7</sup> Thereafter, on August 3, 2001, the Licensing and Technical Analysis Branch (Branch) of the former Public Safety and Private Wireless Division (Division)<sup>8</sup> granted the Walker Application under call sign WPSV754. On October 11, 2001, the Branch granted the RF Data Application under call sign WPTJ220.

4. On November 8, 2001, Walker requested the deletion of frequency pair 471/474.3875 MHz from RF Data's license on the grounds that his earlier-granted license authorizes ninety mobile units on 471/474.3875 MHz.<sup>9</sup> On August 7, 2002, the Division directed ITA to prepare and submit a revised analysis of the best frequency configuration for RF Data's trunked Station WPTJ220.<sup>10</sup> In its August 22, 2002 response, ITA requested the cancellation of the license for Station WPTJ220.<sup>11</sup> In support of its request, ITA agreed that the Commission's records reflect that the Walker Application was filed prior to the RF Data Application.<sup>12</sup>

5. On February 7, 2003, the Division issued a *Memorandum Opinion and Order* proposing to grant Walker's request to delete RF Data's frequency pair 471/474.3875 MHz, and to revise the radio

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<sup>3</sup> 47 C.F.R. § 90.313(b)(2).

<sup>4</sup> 47 C.F.R. § 90.313(c).

<sup>5</sup> FCC File No. 0000476869 (filed May 30, 2001).

<sup>6</sup> FCC File No. 0000478017 (filed May 31, 2001). RF Data also requested frequency pair 452/457.0000 MHz.

<sup>7</sup> Frequency Coordination Number 20011010064758.

<sup>8</sup> The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, FCC 03-291, ¶ 2 (rel. Nov. 25, 2003).

<sup>9</sup> Letter from Gerald R. Walker, Business Radio Licensing, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed Nov. 8, 2001).

<sup>10</sup> Letter dated Aug. 7, 2002 from D'wana R. Terry, Public Safety and Private Wireless Division, FCC, to Jeremy Denton, Industrial Telecommunications Association, Inc.. In this connection, the Division noted that it appeared appropriate to modify RF Data's license by deleting the frequency pair 471/474.3875 MHz.

<sup>11</sup> Letter dated Aug. 22, 2002 from Richard F. Feser, Director, Spectrum Operations Analysis, ITA, to D'wana R. Terry, Chief, Public Safety and Private Wireless Division. ITA explained that its records did not reflect the pending Walker Application at the time it certified the RF Data Application. *Id.* at 1. In this connection, ITA requested that "the Commission cancel the R. F. Data license WPJT220 and we will refund the coordination fees paid by that firm." *Id.*

<sup>12</sup> *See id.*

service class from YG to IG.<sup>13</sup> The Division concluded that ITA's suggestion to cancel RF Data's license was unnecessary because Section 316(a)(1) of the Communications Act of 1934, as amended (the Act),<sup>14</sup> which permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity, provided the appropriate vehicle for resolving this matter.<sup>15</sup> In accordance with Section 1.87 of the Commission's Rules, the Division afforded RF Data an opportunity to file a protest before the Division issued a modification order.<sup>16</sup> On March 7, 2003, RF Data filed a protest of the proposed modifications.<sup>17</sup>

6. On August 3, 2002, the construction period for Station WPSV754 expired. On August 12, 2002, Walker filed a request for extension of time in which to construct the station.<sup>18</sup> On March 17, 2003, the Division returned the extension of time request to Walker.<sup>19</sup> It noted that, because the extension request was filed after the construction period for Station WPSV754 had expired, the request required an amendment requesting a waiver of Section 1.946(e) of the Commission's Rules, which provides that requests to extend a construction period must be filed before the expiration of the construction period.<sup>20</sup> The Division also requested information regarding what steps Walker had taken to obtain and install the equipment needed to make the licensed frequencies operational.<sup>21</sup> After Walker failed to respond, the Division dismissed the extension request on June 8, 2003.<sup>22</sup>

### III. DISCUSSION

7. Section 90.155 of the Commission's Rules provides that authorized stations must be placed in operation within twelve months from the date of grant of the authorization or the authorization cancels automatically.<sup>23</sup> Section 1.946(c) of the Commission's Rules provides that a licensee's authorization terminates automatically "if a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period."<sup>24</sup>

8. RF Data argues that there was no lawful basis for modification of its license for Station WPTJ220 because Walker's authorization for Station WPSV754 had cancelled and terminated

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<sup>13</sup> *MO&O*, 18 FCC Rcd at 1524 ¶ 7.

<sup>14</sup> 47 U.S.C. § 316(a)(1).

<sup>15</sup> *MO&O*, 18 FCC Rcd at 1524 ¶ 6.

<sup>16</sup> *Id.* at 1524-25 ¶ 7.

<sup>17</sup> Protest of Proposed Modifications (filed March 7, 2003) (Protest).

<sup>18</sup> File No. 0000994078 (filed Aug. 12, 2003).

<sup>19</sup> Return Letter, Ref. No. 1784221 (Mar. 17, 2003) (Return Letter).

<sup>20</sup> 47 C.F.R. § 1.946(e).

<sup>21</sup> Return Letter at 1.

<sup>22</sup> Dismissal Letter, Ref. No. 1945232 (June 9, 2003).

<sup>23</sup> 47 C.F.R. § 90.155.

<sup>24</sup> 47 C.F.R. § 90.146(c).

automatically, pursuant to Sections 90.155 and 1.946(c) of the Commission's Rules.<sup>25</sup> It argues that, because of this automatic action, its authorization for Station WPTJ220 is no longer in conflict with Section 90.313 of the Commission's Rules.<sup>26</sup> Additionally, RF Data argues that "maintaining WPTJ220 as licensed and dismissing Walker's defective extension request ... better serves the public interest than deleting 471/474.3875 from WPTJ220 as proposed."<sup>27</sup>

9. When the Division proposed to modify RF Data's license, Walker's request for an extension of time to construct Station WPSV754 was pending. Consequently, the Division concluded that it would be premature to decline to take action on the Walker and ITA requests based on the construction status of Station WPSV754.<sup>28</sup> Subsequently, however, Walker's extension request was dismissed. We therefore conclude that the license for Station WPSV754 has cancelled and terminated automatically pursuant to Sections 90.155 and 1.946(c) of the Commission's Rules. As the Commission recently noted, license modification pursuant to Section 316 of the Act "should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity."<sup>29</sup> Even though RF Data's application for Station WPTJ220 was improperly coordinated, we now conclude under the circumstances presented that it would not be appropriate to delete a frequency from the license of a station that is constructed and operating in order to prevent interference to an unconstructed station, particularly where the license for such station cancelled automatically prior to the proposed modification becoming a final action. Therefore, we will not modify the license for Station WPTJ220 as proposed in the *Memorandum Opinion and Order*.

#### IV. CONCLUSION AND ORDERING CLAUSES

10. In view of the record now before us, we find that Walker's authorization for Station WPSV754 cancelled automatically. We therefore will modify our licensing records to reflect this cancellation. In light of this action, we conclude that it would be inappropriate to modify RF Data's license Station WPTJ220 as proposed in the *Memorandum Opinion and Order*.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), that the Commission's licensing records SHALL BE MODIFIED to reflect the termination of the license for Walker's station under call sign WPSV754.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

#### FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>25</sup> Protest at 2.

<sup>26</sup> 47 C.F.R. § 90.313.

<sup>27</sup> Protest at 4-5.

<sup>28</sup> See *MO&O*, 18 FCC Rcd at 1524 ¶ 5.

<sup>29</sup> *Pacific Gas and Electric Co.*, *Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22768 ¶ 16 (2003).